

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:- 27.11.2006

Coram:-

The Hon'ble Mr. Justice P.SATHASIVAM
and
The Hon'ble Mr. Justice S.TAMILVANAN

Civil Miscellaneous Appeal No.639 of 2006

V.N.Devadoss Appellant

vs.

1. The Chief Revenue Control
Officer-cum-Inspector
General of Registration,
Chennai-600 028.

2. The District Revenue Officer
(Stamps),
Office of the District Collector,
Chennai 600 001.

3. The Sub Registrar,
Ambattur, Chennai.

... Respondents

For Appellant : Mr.R.Gandhi, Senior Counsel
for Mr.R.G.Narendhiran.

For Respondents : Mr.R.Viduthalai, Advocate
General assisted by Mr.V.Srikanth,
Addl. Government Pleader (CS).

Appeal filed under Section 47-A of the Indian Stamp Act as against the order made by the Chief Revenue Control Officer-cum-Inspector General of Registration, Chennai-28, the 1st respondent herein, in his proceedings Pa.Mu.No.22947/NI/2005, dated 8.2.2006, confirming the order of the District Revenue Officer (Stamps), Office of the District Collector, Chennai 600 001, the 2nd respondent herein, in his proceedings Na.Ka.C.Pa.244/2004/A4, dated 11.04.2005.

(Judgment of the Court, delivered by P.SATHASIVAM, J.)

- - - - -

Aggrieved by the orders of the District Revenue Officer (Stamps), Office of the District Collector, Chennai, dated 11.04.2005, and that of the Chief Revenue Control Officer-cum-Inspector General of Registration, Chennai-28, dated 08.02.2006; V.N.Devadoss, Chennai-30, has filed the above Civil Miscellaneous Appeal under Section 47-A of the Indian Stamp Act.

2. Case of the appellant, in brief, is stated here-under,

According to the appellant, an extent of 60.86 acres of land comprised in S. Nos.330, 338, 473, 552 etc. situate at Ambattur Taluk, Tiruvallur District, was previously owned by Dunlop India Limited, a Public Limited Company. The said Company became a sick industry and was declared so under the Provisions of Sick Industrial Companies (Special Provisions) Act, 1985. Consequent to such declaration, for the purpose of rehabilitation, surplus properties and assets belonging to the said company were sought to be disposed of by the statutory authorities under the said Act such as Board for Industrial and Financial Reconstruction (BIFR) and Appellate Authority for Industrial and Financial Reconstruction (AIFR) by forming an Asset Sales Committee (ASC) consisting of members such as representatives of IDBI, Debenture Holders, Government of West Bengal and Special Director of BIFR. In compliance with the guidelines issued by the statutory authorities (BIFR & AIFR), the ASC made publications in Newspapers about its proposal to sell the above mentioned 60.86 acres of lands and invited tenders in sealed covers from interested persons. The appellant submitted his tender along with others and his offer of Rs.24,34,40,000/-, at the rate of Rs.40 lakh per acre, was the highest, accordingly, his tender was accepted by the ASC as well as by the statutory authorities. The company was granted permission to execute the sale deed in favour of the appellant.

It is the further case of the appellant that on receipt of the entire sale consideration of Rs.24,34,40,000/- from him, the said company executed a sale deed dated 17.06.2004, registered as Document No.6939/2004 on the file of the Sub Registrar, Ambattur. The sale is not in between two private individuals, on the other hand, it is a sale in consonance with the conditions laid down under the Sick Industrial Companies (Special Provisions) Act, 1985. In such circumstances, one could visualize that there

could be no question of any possibility of under-valuation of the property warranting the proceedings under Section 47-A of the Indian Stamp Act. Further, the sale was found to be valid in WP No.25962 of 2004 filed by the Dunlop Factory Employees' Union.

A reference was made by the Sub Registrar, Ambattur, to the second respondent-District Revenue Officer (DRO) in respect of the sale transaction, based on which, the second respondent initiated proceedings under Section 47-A of the Stamps Act resulting in issuance of notice dated 18.08.2004 in Form No.1 of Rule 4 of the Tamil Nadu Stamp (Prevention of Undervaluation of Instruments) Rules (in short 'Rules'), calling upon the appellant to state his objections with regard to fixation of the market value of the property at Rs.154,69,88,168/- as against the sum of Rs.24,34,40,000/- for which sum, the property was purchased; and to show cause as to why he should not be called upon to pay the balance stamp duty of a sum of Rs.10,42,83,856/-.

Apart from explaining and setting out the circumstances under which he purchased the property, the appellant also questioned the jurisdiction of the authorities to invoke Section 47-A of the Act. It is the specific case of the appellant that without affording personal hearing, the second respondent by order dated 11.04.2005, confirmed the market value of the land as Rs.465/- per sq. ft. and called upon him to pay the additional stamp duty. Aggrieved by the order of the second respondent, the appellant preferred an appeal before the first respondent on 13.4.2005. On 08.02.2006, the first respondent rejected his appeal, confirming the market value of the property as Rs.465/- per sq. ft. The first respondent also directed the appellant to pay interest at the rate of 2% per month towards the demand made by the authorities. Aggrieved over the same, the appellant has filed the present Appeal before this Court under Section 47-A (10) of the Indian Stamp Act, 1899.

3. Heard Mr. R.Gandhi, learned Senior Counsel for the appellant and Mr.R.Viduthalai, learned Advocate General for the respondents.

4. Learned Senior Counsel appearing for the appellant, after taking us through the proceedings of the second respondent/original authority and the order of the Chief Revenue Control Officer-cum-Inspector General of Registration, viz., first respondent, raised the following contentions:-

(a) There is no justifiable reason by the 2nd respondent to initiate proceedings under Section 47-A(1) of the Act since it is not an automatic or routine procedure in all the transactions to initiate such proceedings except in a case where the

authority has valid reason to believe that the market value has not been truly set forth in the instrument.

(b) In view of the fact that the property in question was brought for sale on the orders of the statutory authorities viz., BIFR and AIFR, and after scrutiny by the ASC constituted under the Sick Industries Companies Act, the sale cannot be construed as the one between two individuals and the authorities committed an error in holding that BIFR is only a mediator without going into the facts and circumstances leading to the sale of the lands.

(c) The second respondent has not disclosed in his order as to under what basis he has chosen to fix the value of the property as Rs.465/- per sq. ft. In the absence of source of information to arrive at such conclusion in the notice of the D.R.O. and in view of the failure on the part of the authority to inform the purchaser enabling him to defend his case with material particulars, fixation of provisional market without any basis has resulted in miscarriage of justice. The second respondent has not followed the mandatory procedure contemplated under Rule 4 of the Rules by not disclosing the basis for arriving at the provisional market value.

(d) The first respondent having found that the property is in a low lying area and that the value relating to a smaller extent cannot be the basis for arriving at the value for a larger extent, ought not to have rejected the appeal filed by the purchaser/appellant without considering the true value of the property shown in the sale deed.

(e) Inasmuch the Government is also a party to WP No.25962 of 2004 filed by Dunlop Factory Employees' Union, questioning the sale of the very same property, which resulted in upholding of the sale by this Court, the second respondent is not justified in invoking Section 47-A of the Act.

5. On the other hand, Mr.R.Viduthalai, learned Advocate General appearing for the respondents submitted that inasmuch as both the original and appellate authorities considered all the relevant aspects/materials and passed the impugned orders properly, in the absence of additional materials, there is no valid ground for interference; and prayed for dismissal of the

Appeal.

6. We have perused the relevant materials and carefully considered the rival contentions. There is no dispute that the appellants purchased an extent of 60.86 acres of land from M/s.Dunlop India Limited by way of sale deed dated 17.06.2004. The said land situates at Ambattur Taluk, Tiruvallur District.

7. First of all, let us consider the argument of the learned Senior Counsel for the appellant that inasmuch the sale was pursuant to the order of the statutory authorities, the same cannot be construed as a transaction between two private individuals.

It is seen that the vendors of the appellant, viz., M/s. Dunlop India Limited, became a sick industry and was declared so under the provisions of Sick Industrial Companies (Special Provisions) Act, 1985. Consequent to such declaration, surplus properties and assets belonging to the said company were sought to be disposed of on the orders of BIFR and AIFR by forming an Assets Sales Committee. Mr.R.Gandhi, learned Senior Counsel for the appellants pointed out that ASC consisted of members such as representatives of IDBI, Debenture Holders, Government of West Bengal, Special Tahsildar - BIFR. He also submitted that, in strict compliance with the guidelines issued by the statutory authorities, the ASC, after wide publication in Newspapers about its proposal to sell 60.86 acres of land, invited tenders in a sealed cover from the interested persons. According to him, pursuant to the same, the appellant herein submitted his tender along with others and his offer of Rs.24,34,40,000/-, being the highest, was accepted by the ASC as well as by the statutory authorities. It is also pointed out that the Company was granted permission to execute the sale deed in favour of the appellant. By pointing out the same, the learned Senior Counsel vehemently contended that in view of involvement of the statutory authorities and meticulous adherence to the procedure by giving wide publication in respect of the sale of those properties, there cannot be any interference with the valuation approved by those statutory authorities.

8. As rightly pointed out by the learned Advocate General, it is not a case of sale by the Government or a transaction between Government Organizations/bodies. The statutory authorities here, viz., AIFR and BIFR, acted only as facilitators. We verified various orders/proceedings of those authorities, report of the ASC and the steps taken for bringing the said property for public sale, available in the Additional typed-set (documents) filed by the appellant. On perusing the same, we are of the view that simply because the sale transaction has taken place pursuant to the proceedings initiated by the

statutory authorities, the same cannot be attributed to a sale between Government and an individual; on the other hand, as rightly pointed out by the learned Advocate General, in order to revive the company - Dunlop India Limited, the statutory authorities rendered their assistance. In other words, those statutory authorities acted only as Facilitators and they have not executed any document as a vendor of the properties. It is also clear that AIFR/BIFR/ASC have merely fixed the sale value and the same cannot be termed as 'market value'. In such circumstances, we are unable to accept the argument of the learned Senior Counsel for the appellant.

9. Let us consider as to whether the decision in WP No.25962 of 2004 is in any way helpful to the case of the appellant. We perused the said decision. It is seen that, on the orders of BIFR and AIFR, when the properties in question were sought to be sold in public sale, Dunlop Factory Employees' Union filed the Writ Petition questioning the sale of the property of the company. The learned Judge, while dismissing the writ petition of the employees, had not gone into the correctness or otherwise of the valuation of the property in question. Merely because the learned Judge upheld the proposed sale, it does not mean that the valuation fixed was also accepted to be correct when there was no specific discussion on that aspect. Such being the case, the said decision is not helpful to the case of the appellant.

10. Now, we shall consider as to whether the second respondent had any justifiable reason and adduced plausible materials for fixing the value of the property as Rs.465/- per sq. ft.

11. Before going into the orders of respondents-1 and 2, it is useful to refer to the relevant provisions of the Indian Stamp Act.

" 47-A. Instruments of conveyance etc. undervalued how to be dealt with.-- (1) If the registering officer appointed under the Indian Registration Act, 1908 (Central Act XVI of 1908) while registering any instrument of conveyance, exchange, gift, release of benami right or settlement has reason to believe that the market value of the property of which is the subject matter of conveyance, exchange, gift, release of benami right or settlement, has not been truly set forth in the instrument he may, after registering such instrument, refer the same to the Collector for determination of the market value of such property and the proper duty

payable thereon.

(2) On receipt of a reference under sub-section (1), the Collector shall, after giving the parties a reasonable opportunity of being heard and after holding an enquiry in such manner as may be prescribed by rules made under this Act, determine the market value of the property which is the subject matter of conveyance, exchange, gift, release of benami right or settlement, and the duty as aforesaid. The difference, if any, in the amount of duty, shall be payable by the person liable to pay the duty.

(3) The Collector may, suo motu or otherwise, within five years from the date of registration of any instrument of conveyance, exchange, gift, release of benami right or settlement, not already referred to him under sub-section (1), call for and examine the instrument for the purpose of satisfying himself as to the correctness of the market value of the property which is the subject matter of conveyance, exchange, gift, release of benami right or settlement, and the duty payable thereon and if after such examination, he has reason to believe that the market value of the property has not been truly set forth in the instrument, he may determine the market value of such property and the duty as aforesaid in accordance with the procedure provided for in sub-section (2). The difference, if any, in the amount of duty, shall be payable by the persons liable to pay the duty:

Provided that nothing in this sub-section shall apply to any instrument registered before the date of commencement of the Indian Stamp (Tamil Nadu Amendment) Act, 1967.

(4)

(5) Any person aggrieved by an order of the Collector under sub-section (2) of sub-section(3), may appeal to such authority as may be prescribed in this behalf. All such appeals shall be preferred within such time, and shall be heard and disposed of in such manner, as may be prescribed by rules made under this act.

- (6)
- (7)
- (8)
- (9)

(10) Any person aggrieved by an order of the authority prescribed under sub-section (5) or the Chief Controlling Revenue Authority under sub-section (6) may, within such time and in such manner, as may be prescribed by rules made under this Act, appeal to the High Court."

In exercise of the powers conferred under Section 47-A and 75 of the Indian Stamp Act, Government of Tamil Nadu framed the Tamil Nadu Stamp (Prevention of Undervaluation of Instruments) Rules, 1968. Rule-3 speaks about furnishing of statement of market value. Rule-4 enumerates the procedure on receipt of reference under Section 47-A. Sub-rule(4) is relevant, which reads as under:-

" 4. Procedure on receipt of reference under Section 47-A.--

- (1)
- (2)
- (3)

(4) After considering the representations, if any, received from the person to whom notice under sub-rule (1) has been issued, and after examining the records and evidence before him, the Collector shall pass an order in writing provisionally determining the market value of the properties and the duty payable. The basis on which the provisional market value was arrived at shall be clearly indicated in the order."

Rule-5 speaks about the principles for determination of market value. Sub-clause (a) refers to lands; (b) house sites; (c) buildings and (d) properties other than lands, house sites and buildings.

12. A case relating to the very same provisions came up for consideration before a Division Bench of this Court in Padmavathi, S.P. vs. State of Tamil Nadu (1997 (II) CTC 617). The following conclusions of the Division Bench are relevant,

" The underlined words contained in sub-sections (1) and (3) of Section 47-A clearly reveal the intention of the Legislature in inserting the aforesaid section 47-A of the Act. The basis for exercising the power under Section 47-A is that there must be a reason to believe that the market value of the property, which is the subject matter of the conveyance, has not been truly set forth in the instrument. It is not a routine procedure to be followed in respect of each and every document of conveyance presented for registration, without any evidence to show lack of bonafides on the part of the parties to the document by attempting fraudulently to under-value the subject of conveyance with a view to evade payment of proper stamp duty and thereby cause loss to the Revenue. Therefore, the basis for exercise of the power under Section 47-A of the act is wilful under-valuation of the subject of transfer, with fraudulent intention to evade payment of proper stamp duty.

.....
.....

Before we leave this matters, we would like to make this observation. Palaniswamy, J. in the course of his judgment, evidently apprehended that the Amending Act might be used as a means of oppression by the officers entrusted with the duty of collecting the charge. But this charge can be levelled in respect of other taxing statutes as well where the basis of tax or quantification of tax is that market value. Even so, we are inclined to think that the object of the Amending Act being to avoid large scale evasion of stamp duty, it is not meant to be applied in a matter of fact fashion and in a haphazard way. Market value itself, as we already mentioned,

is a changing factor and will depend on various circumstances and matters relevant to the consideration. No exactitude is, in the nature of things possible. In working the Act, great caution should be taken in order that it may not work as an engine of oppression. Having regard to the object of the Act, we are inclined to think that normally the consideration stated as the market value in a given instrument brought for registration should be taken to be correct unless circumstances exist which suggest fraudulent evasion. Even in such a case, we trust that disputes will not be raised for petty sums. Unless the difference is considerable or sizable and it appears patent that the amount mentioned in the document is a gross undervalue, no disputation as to value is expected to be started. "

After observing so, the Division Bench concluded thus:-

" 15. we accordingly, answer Point No.1 as follows:-

" ...Power under Section 47-A of the Act can only be exercised when the Registering Officer has reason to believe that the market value of the property, which is the subject of conveyance, has not been truly set forth, with view to fraudulently evade payment of proper stamp duty. Mere lapse of time between the date of agreement will not be the determining factor that the document is undervalued and such circumstance by itself is not sufficient to invoke the power under Section 47-A of the Act, unless there is lack of bona fides and fraudulent attempt on the part of the parties to the document to undervalue the subject of transfer with a view to evade payment of proper stamp duty.... "

13. A careful reading of the above provisions viz., 47-A, and the interpretation of the Division Bench make it clear that unless there exist reasons to believe that there was an attempt on the part of the parties to the instrument to deliberately undervalue the subject of transfer with a view to evade payment of proper stamp duty, the power under Section 47-A cannot be invoked.

In other words, there must be a specific finding that there was deliberate and fraudulent under-valuation of the subject of transfer with a view to evade payment of proper stamp duty. To put it clear, for exercise of the power under Section 47-A of the Act, there must be sufficient materials to show that there was willful under-valuation of the subject of transfer with fraudulent intention to evade payment of proper stamp duty. Further, the authority concerned must follow the conditions prescribed in Rules-4 and 5 of the Rules on receipt of reference under Section 47-A.

14. The proceedings of the second respondent/D.R.O. (Stamps) show that the applicant therein (appellant herein) specifically stated that the entire extent of 60.86 acres is a vacant land with thorny bush and there is no building, trees or compound wall. It is also his claim that out of 60.86 acres, 30 acres are at a depth of 6 ft. from the ground level. The said area looks like a pond - kulam. In the remaining area, only velikathan/thorny trees are in plenty. It is further stated that the property is 2 kms. away from the main road. Further, no tar road facility is available and mud road alone is there. In view of the fact that 50% of the area lies at 6 ft. depth, for the formation of house sites, 40% of the area has to be deducted for providing facilities such as road, frontage etc. The D.R.O. though accepted the above mentioned position with regard to the condition of the land, taking note of the fact that in the guideline value, 1 Sq. Ft. has been mentioned as Rs.583, without reference to any specific document, fixed Rs.465/- per sq. ft. We have already referred to the provisions of the Act, viz., 47-A, which make it clear that it is not automatic that, in every case, it has to be presumed that there is under valuation. There must be relevant materials, apparently indicating wilful under-valuation and fraudulent intention. The order of the DRO does not disclose any material for fixing the valuation at the rate of Rs.465 per sq. ft. In this regard, it is useful to mention that, as per Rule 4(4), after considering the representations and examining the records and evidence, the Collector shall pass an order in writing provisionally determining the market value of the properties and the duty payable. The Rule also provides that the basis on which the provisional market value was arrived at shall be clearly indicated in the order. It is clear that in the Notice, the DRO (Stamps) has not at all stated on what basis he has chosen to fix the value of the property. It is mandatory for the DRO to inform the purchaser in any proceeding under Section 47-A as to the basis on which the provisional market value was arrived at under Rule 4(4) of the Rules. We are satisfied that the 2nd respondent has not followed the mandatory procedure prescribed under Rule-4 of the Rules by not disclosing the basis for arriving the provisional market value. Except the general statement, the D.R.O. has not specified any document relating to a land similar

to the one involved in the impugned transaction. In the absence of such material, if it is Rs.465/- per sq. ft., why it should not be Rs.485/- or even Rs.400/-. Further, in the Notice, the D.R.O. has stated that the guideline value is Rs.583/- per sq. ft. The survey number for which the guideline value has been fixed at Rs.583/- has not been stated anywhere in the proceedings. If the same is fixed after considering a smaller extent of land or building, the same cannot be adopted or taken into account for the purpose of arriving at the market value of the lands purchased by the appellant which, according to him, are not building sites. Fixation of the value for a large extent of 60.86 acres on the basis of guideline value relating to a small extent of land is against law and not acceptable. In cases relating to Land Acquisition Act, courts have taken a view that for determining the compensation payable to the land owner, whose land has been acquired by the Government, the market value shown in relation to sale of small extent of properties cannot be taken into consideration for fixing the market value of a large extent of property, in the case on hand 60.86 acres.

15. In addition to the above infirmities, though the D.R.O. has accepted the stand of the purchaser that 50% of the area viz., 30 acres, is in a depth of 6 ft., which cannot be used without spending huge sum for levelling, and that the land in question is 2 Kms. away from the main road and that no tar road facility is available, there is no indication by him as to whether he had considered any relevant material for fixing the market value at the rate of Rs.465/- per sq. ft. In a matter like this, though the authority is free to fix the market value based on acceptable materials, however, the order must disclose the reasons for his conclusion. In the same way, though the appellate authority/first respondent noted all the disadvantages such as uneven level of the land, away from main road and no facilities such as road and water are available, he has merely confirmed the value fixed by the DRO. As an appellate authority, the first respondent has ample powers to re-determine the value based on available materials. The authorities under the Stamp Act are to exercise their powers reasonably to achieve the object and intendment of the provision and if there is any arbitrariness in their action, it is liable to be questioned. As discussed earlier, we find that except general statements, both the authorities, viz., respondents-1 and 2, failed to point out the relevant materials for fixing the market value at Rs.465/- per sq. ft. when the purchaser highlighted several aspects to show that the value mentioned in the document is true and correct. Thus, respondents 1 and 2 failed to exercise the statutory power conferred on them in a proper perspective. In such circumstances, we have no other option except to quash both the orders and remit the matter for a fresh consideration.

16. Consequently, the impugned proceedings of the 2nd respondent/the District Revenue Officer (Stamps), Chennai-1, in his proceedings NA.Ka.C.Pa.244/2004/A4, dated 11.04.2005, and that of the first respondent/Chief Revenue Control Officer-cum-Inspector General of Registration in Pa.mu.No.22947/NI/2005, dated 08.02.2006, are set aside and the matter is remitted to the original authority/second respondent to pass fresh orders, after affording opportunity to the appellant, within a period of three months from the date of receipt of a copy of this Judgment. The appellant is free to place all the relevant materials in support of his stand.

17. C.M.A. is allowed to the extent mentioned above. No costs.
JI.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Chief Revenue Control Officer-cum-Inspector General of Registration, Chennai-600 028.
2. The District Revenue Officer (Stamps), Office of the District Collector, Chennai 600 001.
3. The Sub Registrar, Ambattur, Chennai.
4. The Record Keeper, VR Section, High Court, Madras - 104

+ one cc to the Government Pleader sr no. 57815
+ one cc to Mr. R.G. Narendhiran, Advocate sr no. 57727

gm(co)
nm(28.11.2006)

CMA No.639 of 2006.